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and James Denton

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Father and Mother Doe, husband and wife, in
their own capacities and as the natural parents
and legal guardians on behalf of Jane Doe, a
minor child,

Plaintiffs,

v.

The Apache Junction Unified School District;
James Denton, in his individual and official
capacity as principal of Apache Junction High
School and Jane Doe Denton his wife; Jonathan
Raye Krieger, in his individual and official
capacity as a teacher of Apache Junction High
School; John Smith I-X; Jane Smith I-X; and
Public Entities I-X,

Defendants.

No. CV11-01387-PHX-DKD

MOTION TO DISMISS

(Assigned to the Honorable
David K. Duncan)

The District and James Denton move to dismiss the parents' state law claims as
barred by A.R.S. § 12-821. Denton also moves to dismiss all state law claims asserted
against him, including the daughter's, because he has never received a notice of claim in

1 accordance with A.R.S. § 12-821.01. Finally, the District and Denton move to dismiss any
2 punitive damage claim as baseless.

3
4 Jane Doe was a District student. First Amended Complaint ¶ 19. Jonathan Krieger
5 worked for the District as a high school teacher. *Id.* ¶¶ 11-12, 17. James Denton was the
6 high school principal. *Id.* ¶¶ 8-9. Plaintiffs claim that Krieger sexually assaulted Jane Doe,
7 leading to his arrest on February 19, 2010. *Id.* ¶ 21.

8
9 **1. A.R.S. § 12-821 bars the parents' state law claims.**

10 A.R.S. § 12-821 requires that “[a]ll actions against any public entity or public
11 employee shall be brought within one year after the cause of action accrues and not
12 afterward.”

13
14 The District is a political subdivision. *Warrington v. Tempe Elementary Sch. Dist.*
15 *No. 3*, 187 Ariz. 249, 251 (App. 1996). A political subdivision is by definition a public
16 entity. A.R.S. § 12-820(6). So the District is a public entity. And Denton was a public
17 employee. First Amended Complaint ¶¶ 8-9.

18
19 Despite Krieger’s arrest on February 19, 2010, the parents delayed filing this action
20 until June 1, 2011—more than three months after the one year statute of limitations ran on
21 any state law claims. Accordingly, A.R.S. § 12-821 bars the parents’ state law claims
22 against the District and Denton.

23
24 **2. A.R.S. § 12-821.01 bars all state law claims asserted against Denton,**
25 **including the daughter’s.**

26
27 A.R.S. § 12-821.01 requires all persons who have claims against a public entity and
28 public employees to file those claims within 180 days of accrual. Indeed, public

1 employees are entitled to individual notice. *Johnson v. Superior Court*, 158 Ariz. 507, 509
2 (App. 1988). Failure to comply with this requirement means that all claims are “barred and
3 no action may be maintained thereon.” A.R.S. § 12-821.01(A).
4

5 Denton has never received a notice of claim from plaintiffs or one relating in any
6 way to the allegations concerning Jane Doe and Krieger. Exhibit 1. So A.R.S. § 12-821.01
7 bars all state law claims asserted against Denton, including Jane Doe’s.
8

9 **3. Any punitive damage claim is baseless.**

10 A.R.S. § 12-820.04 states that “[n]either a public entity nor a public employee
11 acting within the scope of his employment is liable for punitive or exemplary damages.”
12 Thus, plaintiffs cannot recover punitive damages from the District or Denton under state
13 law.
14

15 Moreover, the District is clearly not liable for punitive damages under federal law.
16 The District is immune from punitive damages under 42 U.S.C. § 1983. *Newport v. Fact*
17 *Concerts, Inc.*, 453 U.S. 247, 271 (1981). And as Spending Clause legislation, Title IX
18 does not support an award of punitive damages. *Barnes v. Gorman*, 536 U.S. 181, 185-90
19 (2002).
20
21

22 For these reasons, the Court should dismiss any punitive damage claim as well as
23 the parents’ state law claims with prejudice. The Court should also dismiss the daughter’s
24 state law claims against Denton.
25

26 . . .

27 . . .
28

1 DATED this 15th day of July, 2011.

2 HOLM WRIGHT HYDE & HAYS PLC

3
4 By /s/ David K. Pauole
5 Matthew W. Wright
6 David K. Pauole
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9 Attorneys for Defendants Apache Junction
10 Unified School District and James Denton

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on July 15, 2011, I electronically transmitted the attached
13 document to the Clerk's Office using the CM/ECF System for filing.

14
15 COPIES mailed to:

16 The Honorable David K. Duncan
17 United States District Court
18 401 West Washington
19 Phoenix, AZ 85003

20 Jonathan R. Krieger
21 Central Arizona Correctional Facility
22 Jonathan R. Krieger, Inmate #257322
23 P.O. Box 9600
24 Florence, AZ 85132-9600

25 /s/ Cindy M. Opsahl

26 6927-0964